

HENRIETTA PEAKER PROJECT APPLICATION
FOR CERTIFICATION PUBLIC CONFERENCE

BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

DOCKET NO. 01-AFC-18

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
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SACRAMENTO, CALIFORNIA

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Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

ON BEHALF OF THE CALIFORNIA ENERGY COMMISSION:

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Arthur H. Rosenfeld, Commissioner and Presiding
Member

Lisa DeCarlo, Staff Counsel

Matthew Layton, Senior Mechanical Engineer

Bob Eller, Project Manager

Dale Edwards, Supervisor

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ON BEHALF OF THE APPLICANT:

John P. Grattan, Esq., Lobbyist

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Doug Wheeler, VP, Business Development

Mark Kehoe, Environmental and Safety Compliance
Manager

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Photograph: GWF
Henrietta Peaker
Project View to the
West from KOP-4

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Photograph: GWF
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Final testimony of
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1 P R O C E E D I N G S

2 10:10 a.m.

3 HEARING OFFICER SHEAN: Good morning,
4 ladies and gentlemen. I'm Garret Shean, I'm the
5 hearing officer on the Henrietta AFC case. With
6 me this morning is Commissioner Rosenfeld, who is
7 the presiding member of that proceeding.

8 Our meeting today is a conference to
9 take comments on the committee presiding member's
10 proposed decision. Why don't we have
11 introductions from the staff and applicant,
12 please.

13 STAFF COUNSEL DE CARLO: Hello, my name
14 is Lisa DeCarlo. I'm staff counsel for the
15 California Energy Commission. To my right is Bob
16 Eller, the project manager for the Energy
17 Commission.

18 APPLICANT COUNSEL GRATTAN: And my name
19 is John Grattan. I'm counsel for the applicant,
20 GWF Energy Systems, LLC. To my right is Dave
21 Stein from URS, who has been the project manager
22 through this process. And behind me are Doug
23 Wheeler, who is the vice president for business
24 development for GWF, and Mark Kehoe is the
25 environmental and safety compliance manager.

1 HEARING OFFICER SHEAN: Okay, and our
2 public adviser?

3 PUBLIC ADVISER MENDONCA: I'm Roberta
4 Mendonca, the Energy Commission public adviser.

5 HEARING OFFICER SHEAN: I'll just note
6 for the record that, at least in the audience here
7 in Sacramento, there do not appear to be any
8 members of the public. We are attempting to
9 establish our teleconference hookup, and if, at
10 any point, someone wishes to call in and
11 participate, they will identify themselves and we
12 will continue with them in their participation.

13 We have essentially two major items to
14 deal with this morning. The evidentiary record we
15 believe should have remained open for the purpose
16 of receiving the final determination of
17 compliance, and I'll note further that the staff
18 has submitted photographs of an area related to
19 their comments on visual resources. And perhaps
20 if the applicant has no objection, we'll take
21 those into the record as well.

22 But for now, why don't -- And then is to
23 review the comments made by the staff and the
24 applicant on the PMPD and discuss some of those,
25 and the committee can indicate, probably at the

1 beginning of those that we've gone through and
2 obviously accepted. Most of them are either
3 typographical in nature, diction in nature or non-
4 substantive or essentially corrective. There are
5 a couple, though, that do address concerns, either
6 of the applicant of the staff.

7 So with that, why don't we do the matter
8 of completing our record and at this point go to
9 the staff and ask for the introduction of the Air
10 District's final determination of compliance.

11 STAFF COUNSEL DE CARLO: Yes. The staff
12 would like to call Matthew Layton to the stand for
13 the purpose of entering the FDOC into the
14 record -- That would be the final determination of
15 compliance -- and he needs to be sworn in.

16 THE REPORTER: Would you raise your
17 right hand, please.

18 Whereupon,

19 MATTHEW LAYTON

20 Was called as a witness herein and, after first
21 being duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY STAFF COUNSEL DE CARLO:

25 Q Mr. Layton, could you please explain

1 your position and role at the Energy Commission.

2 A Good morning, my name is Matthew Layton.
3 I'm a senior mechanical engineer in the Air Unit
4 of the Siting Divisions, Environmental Office.

5 Q And do you have before you a copy of the
6 final determination of compliance issued by the
7 San Joaquin Valley Unified Air Pollution Control
8 District in the Henrietta Peaker project case?

9 A I do.

10 Q Have you reviewed this document?

11 A I have.

12 Q Could you please describe how this final
13 version of the FDOC came about and summarize its
14 conclusions.

15 A I oversee the preparation of air quality
16 staff assessments. In this case I oversaw the
17 effort by Mr. Will Waters for the GWF Henrietta
18 project. Our analysis of the air quality aspects
19 of the project includes whether the project
20 complies with all applicable laws, ordinances,
21 regulations, and standards, in particular, the
22 rules and regulations of the local air district,
23 San Joaquin Valley Unified APCD.

24 In working with the district to arrive
25 at a final determination of compliance, we

1 identified some inconsistencies in the final
2 determination of compliance that, if left
3 uncorrected, could have made it difficult for the
4 project to consistently comply with its permit
5 conditions. Because the changes were substantive,
6 the air district chose to issue a revised final
7 determination of compliance for comment. The
8 district is unable to appear today due to a
9 variety of resource conflicts; however, I'm here
10 to summarize the final DOC dated January 10th,
11 2002 and enter it into the Henrietta proceeding.

12 The Henrietta project consists of two
13 47-megawatt natural gas fire-combusted turbines,
14 operating in simple-cycle mode, and a 250-kilowatt
15 diesel-to-fire emergency generator. The turbine
16 permits allow up to 300 startups per year and
17 8,000 hours of operation per year. To comply with
18 the federal, state and local air quality rules and
19 regulations, combustion turbine air emissions are
20 controlled through the use of water injection, an
21 ammonia-selective catalytic reduction system, and
22 an oxidation catalyst.

23 For simple-cycle turbines, the BACT
24 levels or best available control technology --
25 (Telephone recording heard.)

1 HEARING OFFICER SHEAN: Why don't we
2 just stand by here for a second.

3 For some reason we can't get an outside
4 line. Let me try one more time.

5 (Attempting to dial.)

6 HEARING OFFICER SHEAN: All right.
7 We'll just indicate then on the record that due to
8 technical difficulties beyond our control we are
9 unable to establish our teleconference link. I'll
10 just note for the record that at the special
11 business meeting that's been established for
12 March 5th that we also have a teleconference
13 connection so that any member of the public who
14 wishes to comment on the presiding member's
15 proposed decision which will be available for
16 Commission review and potential adoption would
17 have an opportunity similar to what they would
18 have today.

19 So, with that, Mr. Layton, why don't you
20 go ahead.

21 THE WITNESS: Okay. For this project,
22 the simple-cycle turbines are permitted or the
23 BACT level was determined to be, for NOx, five
24 ppm. This project, however, is permitted at 3.6
25 parts per million NOx, which is below the BACT

1 requirements. The project also complies with the
2 federal, state and local rules and regulations for
3 CO, VOC, which is volatile organic compounds, PM10
4 and sulfur dioxide emissions.

5 The project emissions triggered district
6 offset requirements for NOx and PM10. Sufficient
7 emission reduction credits have been identified in
8 the revised final VOC. To comply with the
9 district requirements, the ERC's, the emission
10 reduction credits, will be surrendered prior to
11 the start of construction on this project.

12 The revised final DOC, dated
13 January 10th, 2002 concluded that the project will
14 comply with all federal, state and local air
15 quality rules and regulations. The staff concurs
16 and has filed the final staff assessment
17 incorporating the DOC conditions into their staff
18 assessments.

19 BY STAFF COUNSEL DE CARLO:

20 Q And does the information contained in
21 the FDOC change any findings or conclusions made
22 in the staff assessment?

23 A It does not.

24 Q Does this conclude your testimony?

25 A It does.

1 Q Thank you.

2 STAFF COUNSEL DE CARLO: The witness is
3 available for any cross examination.

4 HEARING OFFICER SHEAN: Mr. Grattan, do
5 you have anything of the witness?

6 APPLICANT COUNSEL GRATTAN: No.

7 HEARING OFFICER SHEAN: Thank you very
8 much. You're excused.

9 STAFF COUNSEL DE CARLO: Thank you.

10 (Thereupon, the witness was
11 excused from the stand.)

12 HEARING OFFICER SHEAN: All right. Let
13 me just ask, and maybe we'll do this in the most
14 expeditious way. In the staff comments on the
15 presiding member's proposed decision, there were
16 two photographs provided in the comments. They
17 were apparently taken in February 2002, or at
18 least the February 2002 date associated with them.
19 One is labeled the GWF Henrietta Peaker Project
20 View to the West from KOP-4, and the other is GWF
21 Henrietta Peaker Project View to the East from
22 KOP-4.

23 Is there objection to the admission of
24 those into the record? The real reason is that in
25 the staff comments they have indicated on the

1 visual resources that these represent the views
2 from this KOP that were not in the record, and the
3 committee has reviewed its PMPD and is prepared to
4 make revisions that would incorporate the fact
5 that these views do exist.

6 APPLICANT COUNSEL GRATTAN: We've seen
7 the photographs and we have no objection.

8 HEARING OFFICER SHEAN: Okay. And
9 obviously staff has no objection to the admission
10 of its own material.

11 STAFF COUNSEL DE CARLO: No.

12 HEARING OFFICER SHEAN: So they are
13 admitted into the record.

14 (Thereupon, the above-referenced documents
15 were marked as CEC exhibits for
16 identification and received into evidence.)

17 HEARING OFFICER SHEAN: Is there any
18 other evidentiary matter that we need to take care
19 or anything before we move into the comments
20 themselves?

21 STAFF COUNSEL DE CARLO: Can we just
22 move these into the record? We have also another
23 document, the final testimony of Mohammed Awad of
24 the California ISO entitled Transmission System
25 Reliability, Interconnection of the Henrietta

1 Power Plant Project docketed on January 14th,
2 2002, and we just want to make sure that that's in
3 the record.

4 APPLICANT COUNSEL GRATTAN: Can we look
5 at that real quick, please?

6 HEARING OFFICER SHEAN: Sure.

7 STAFF COUNSEL DE CARLO: Sure.

8 APPLICANT COUNSEL GRATTAN: I'm sure
9 we'll have no objection, but we haven't seen it.

10 HEARING OFFICER SHEAN: Sure.

11 STAFF COUNSEL DE CARLO: I appear to
12 have left it on my desk. I'd be happy to get that
13 at the end of the proceedings.

14 HEARING OFFICER SHEAN: Okay. We'll
15 come back to that.

16 STAFF COUNSEL DE CARLO: Okay.

17 HEARING OFFICER SHEAN: All right. Now
18 what I thought I'd do is have us go through the
19 proposed or the comments and the proposed changes
20 and just indicate to you, probably on a page-by-
21 page here what the committee has gone ahead with.

22 We'll start first with the staff.

23 Everything that appears on page one for project
24 description and air quality we've incorporated.
25 On page two, we've done it except for I had a

1 question with regard to the second item on page
2 22, and there was a comment or something that I
3 heard from the applicant about the inclusion of
4 SO2 in this mitigation paragraph; is that correct?
5 Or does that look all right to you?

6 Mr. Grattan, do you know --

7 APPLICANT COUNSEL GRATTAN: What page,
8 which bullet on --

9 HEARING OFFICER SHEAN: It would be the
10 second bullet. It refers to page 22, and it's the
11 large paragraph that also has the mitigation thing
12 on it. And the second check mark is "Project
13 owner shall provide emission offsets for NOx,
14 VOCs, PM10 and SO2 emissions." Did you have an
15 issue with the inclusion of SO2? Understanding
16 this is not a condition, this is a descriptive
17 paragraph.

18 APPLICANT COUNSEL GRATTAN: Yeah. I
19 believe that we did not, we weren't required to
20 provide NOx emission reduction credits. These
21 were the CEQA offsets.

22 HEARING OFFICER SHEAN: Okay. Well,
23 understanding that this is not a condition I'm
24 prepared to pretty much go with it --

25 APPLICANT COUNSEL GRATTAN: Right.

1 HEARING OFFICER SHEAN: -- knowing that
2 the conditions are what the conditions are.

3 Okay. The only other item is what's
4 shown in the bullet, the first bullet that says,
5 on page 27, it says, "List the mitigation measures
6 that apply to nitrogen dioxide as was done for the
7 other criteria pollutants." I think -- And I
8 think what they were talking about here was
9 including this mitigation with the little check
10 boxes as well, not knowing exactly where that
11 would lead. And since most of the NOx stuff is
12 covered under ozone, I think we're going to choose
13 to just leave things pretty much the way they are.

14 STAFF COUNSEL DE CARLO: That's fine.

15 HEARING OFFICER SHEAN: Okay. The rest
16 of the items that appear on this page two of the
17 staff comments we did.

18 On page three, everything is -- We
19 accepted all the comments. Let me look at this
20 one that shows the second comment on page 52,
21 because I'm showing that we did this partially.
22 Oh, this was a rewording, and I think we've
23 captured the essence of the rewording the staff
24 suggested by a couple of different words. But
25 fundamentally, everything on that page was

1 acceptable.

2 On page four of the staff comments, I
3 just had a question here with regard to this
4 second comment -- on the page, the second comment
5 on cultural resources showing page 64. I think
6 this was more a -- there was a request to remove
7 this sentence on the basis that it gave the
8 impression that there were no Native American
9 concerns regarding the project, and it refers to a
10 discussion that occurred two pages prior to 62.

11 I went back and read that, and it seemed
12 to me that the discussion on page 62 was
13 sufficient to essentially say, not that there were
14 no concerns, but there had been some participation
15 by representatives of the Native American
16 community, but that so far, no cultural resource
17 sites had been identified in the project. And I
18 think that still is a true statement.

19 So we were going to basically leave
20 things as are.

21 STAFF COUNSEL DE CARLO: Yeah, we were
22 just referencing that the Native American, in that
23 discussion on page 62, had indicated that he knew
24 of some sites, of a prehistoric site within one
25 mile of the project area, and of a historic Indian

1 farmhouse ranch settlement. So we were just
2 trying to ensure that there was no apparent
3 contradiction with that.

4 HEARING OFFICER SHEAN: Okay. Down on
5 the geology/paleontology, the request for a
6 facility closure condition, this PAL-7, it's been
7 the practice so far to try to move all the closure
8 conditions into the general conditions of
9 certification, what we would otherwise ordinarily
10 call the compliance conditions, so that we were
11 not essentially getting condition creep in every
12 one of the subject areas in the PMPD.

13 So, for that reason and believing that
14 it's sufficiently covered in the general
15 conditions of compliance, we were not going to
16 include PAL-7.

17 On page five, let me say it appears from
18 the comments submitted by the applicant that the
19 inclusion of Land 1, 2 and 3 are acceptable to
20 you.

21 APPLICANT COUNSEL GRATTAN: Yes.

22 HEARING OFFICER SHEAN: Okay. So we
23 wouldn't --

24 APPLICANT COUNSEL GRATTAN: Yeah, I
25 don't think we -- I think our comment was, both

1 staff and us, we didn't need Land 1, but
2 reinsertion of the other staff conditions were
3 renumbered.

4 STAFF COUNSEL DE CARLO: Right, right.

5 APPLICANT COUNSEL GRATTAN: Right.

6 We've complied with Land 1 --

7 HEARING OFFICER SHEAN: That was my
8 understanding, that it's already been done.

9 STAFF COUNSEL DE CARLO: Land 1 as it
10 appears in the PMPD, correct --

11 APPLICANT COUNSEL GRATTAN: Right.

12 STAFF COUNSEL DE CARLO: -- and not as
13 it appears in staff's comments.

14 APPLICANT COUNSEL GRATTAN: Right.

15 STAFF COUNSEL DE CARLO: Okay.

16 APPLICANT COUNSEL GRATTAN: Got that?

17 STAFF COUNSEL DE CARLO: Yeah.

18 HEARING OFFICER SHEAN: All right.

19 Let's just make sure we're on the same page here.

20 There were no land use conditions in the
21 PMPD, so what we're saying here --

22 STAFF COUNSEL DE CARLO: So Land 1, I'm
23 sorry, as it appeared in the staff assessment, is
24 no longer necessary; therefore, in our comments
25 we've renumbered the remaining land use

1 conditions.

2 APPLICANT COUNSEL GRATTAN: That's
3 correct, and that's --

4 HEARING OFFICER SHEAN: So as shown in
5 their comments, Land 1, 2 and 3 are acceptable to
6 you, to the applicant.

7 APPLICANT COUNSEL GRATTAN: Land 1, 2
8 and 3 --

9 HEARING OFFICER SHEAN: In these
10 comments.

11 APPLICANT COUNSEL GRATTAN: -- as
12 proposed by staff are, yes.

13 HEARING OFFICER SHEAN: Okay. They will
14 be included, then.

15 On page six, I had a question with
16 respect to the noise on page 105, the bullet under
17 the noise 2 condition, and why that language
18 should be stricken that says "if the noise is
19 project-related." Should the complaint and
20 process and the mitigation process be applied to
21 anything that would not be project-related noise?
22 I'm trying to understand the nature of the
23 objection.

24 STAFF COUNSEL DE CARLO: Right. We just
25 want to ensure that any complaint made to the

1 applicant is reported and submitted to the CPM,
2 just to verify that indeed, in our opinion as
3 well, that the noise complaint has been taken care
4 of. I would assume that the noise is not related
5 to the project. A simple statement by the
6 applicant that we've investigated the matter, the
7 noise is not project-related; therefore, we're not
8 doing anything for it.

9 APPLICANT COUNSEL GRATTAN: Okay. No
10 objection, no problem.

11 HEARING OFFICER SHEAN: All right, we'll
12 do that. So all of the comments on page six are
13 accepted.

14 On page seven, I would say all of them
15 are accepted, but the last two under Visual
16 Resources, page 137 and 138, are partially
17 accepted, and I think what we're trying to do is,
18 without significantly changing the discussion but
19 adding to the discussion the recognition of the
20 photographs that you have submitted, and a
21 discussion that would relate to that, that we're
22 making modifications to condition -- Let me get
23 it -- condition six, I think it is. And we want
24 to discuss this a little bit. I'm sorry,
25 condition five, it would be.

1 And why don't we go to that. It's on
2 page 152 of the PMPD. Staff seems to have a
3 problem with this language that appears on the
4 third line, which provides that "The applicant
5 will submit a landscaping plan which provides for
6 any or all of the following, as appropriate," and
7 then includes, "berms, vegetation and trees and
8 slats in the fences." And, if I understand
9 correctly, the idea is that's not sufficient
10 certainty, even with the provision that it is
11 subject to CPM review and approval to ensure that
12 the visual impacts from KOP-5 are mitigated to the
13 extent that it will make them insignificant.

14 Now, I don't know how far the applicant
15 is prepared to go on this, but if it is that the
16 landscaping plan shall include vegetative
17 screening and/or berms and slats in the fence,
18 does that satisfy staff and is it acceptable to
19 the applicant?

20 APPLICANT COUNSEL GRATTAN: That's fine.

21 HEARING OFFICER SHEAN: So essentially,
22 vegetative screening would be required, and the
23 options relate to berms and slats.

24 APPLICANT COUNSEL GRATTAN: That's
25 acceptable to us.

1 HEARING OFFICER SHEAN: Okay. Is that
2 acceptable to staff?

3 STAFF COUNSEL DE CARLO: If you can just
4 give us a minute to think about this really
5 quickly.

6 I think we still would prefer that our
7 proposed condition, which we did, have discussed
8 previously with the applicant be put in place of
9 this five as it appears in the PMPD. Our concern
10 is that there is enough specificity in the
11 condition to be able to enforce it, and, as
12 written, even with the and/or provision it doesn't
13 provide enough specificity in our eyes.

14 We would just prefer that it delineate
15 that the plant species chosen be fast-growing, and
16 that they be selected so that there will be a
17 blend, that will be blended into the surrounding
18 environment. And we feel that that gives the
19 applicant enough flexibility to design their
20 landscaping plan to their liking, and also satisfy
21 our concerns that it actually mitigate for any
22 significant impact in visual.

23 HEARING OFFICER SHEAN: Okay. Now, let
24 me just ask you this, because in the protocol, it
25 lists the things that they have to tell you

1 they're going to provide, and those all have to be
2 approved by the CPM. Now, if there's a list of
3 trees and shrub species that are installation
4 sizes and suitability for the site, would you be
5 able to identify under those circumstances whether
6 or not they're fast-enough growing and they are of
7 a type that is compatible, both as far as Kings
8 County is concerned and our CPM of -- that those
9 are appropriate species for vegetative screening?

10 STAFF COUNSEL DE CARLO: Our concern is
11 that for enforcement purposes, the condition
12 should be as specific as possible, and geared
13 towards what we see as completely necessary to
14 actually mitigate. It's true that the CPM does
15 have review authority; however, if it's not to the
16 CPM's liking and yet it still complies with the
17 condition as written, there is the potential --

18 HEARING OFFICER SHEAN: But how could
19 it? If it doesn't have the CPM's approval, it
20 doesn't comply, right? I mean, the condition
21 says, "and to the CPM for review and approval."
22 So if the CPM doesn't approve, it doesn't comply,
23 right?

24 STAFF COUNSEL DE CARLO: We would just
25 prefer that, since the applicant did agree with

1 our language, that for the purposes of being as
2 specific as possible, giving the applicant a clear
3 understanding of what we are seeking and giving
4 any person reading this document a clear
5 understanding of what staff is requiring, we
6 believe that that's critical in ultimately getting
7 a landscaping plan that we can approve.

8 HEARING OFFICER SHEAN: All right.
9 Let's go to your page nine. Is that the language
10 that you're wanting to be added?

11 STAFF COUNSEL DE CARLO: Yes. That
12 paragraph, just to replace the initial paragraph
13 of this five, and would suffice, and I'm not sure
14 if the applicant had some suggestions on that.

15 APPLICANT COUNSEL GRATTAN: No, we don't
16 have a problem with that.

17 STAFF COUNSEL DE CARLO: Okay.

18 HEARING OFFICER SHEAN: Well, all right.
19 If you go through that language, let's see, first
20 on the second line of that, "Will prepare and
21 implement an approved perimeter landscape plan,"
22 right?

23 STAFF COUNSEL DE CARLO: Correct.

24 HEARING OFFICER SHEAN: "Of the west and
25 south views." All right, but it includes

1 evergreens, right? Is that a mandatory?

2 "Including but not limited to evergreens"?

3 STAFF COUNSEL DE CARLO: Correct.

4 HEARING OFFICER SHEAN: Now, why is
5 that?

6 STAFF COUNSEL DE CARLO: We found that
7 evergreens tend to be a really good species or a
8 good type of tree to use in these instances.
9 They're fast-growing, they provide good screening;
10 however, we don't want to limit the applicant to
11 just those if it proves that those would not work
12 in this particular instance. So it's attempting
13 to give them some guidance.

14 HEARING OFFICER SHEAN: But it always
15 has to include evergreens; is that right?

16 STAFF COUNSEL DE CARLO: No, as a
17 potential.

18 HEARING OFFICER SHEAN: But doesn't it
19 say "including but not limited to evergreens"?

20 STAFF COUNSEL DE CARLO: It's not
21 limited to evergreens, we're just trying to give
22 some indication --

23 HEARING OFFICER SHEAN: But it must
24 include evergreens.

25 STAFF COUNSEL DE CARLO: -- of what

1 types. No, I don't believe the --

2 HEARING OFFICER SHEAN: Well, tell me
3 how you can read that sentence to not include --
4 it says "including but not limited to evergreens."
5 How can you read that to not make evergreens
6 mandatory?

7 STAFF COUNSEL DE CARLO: The emphasis is
8 on fast-growing tree species, and I believe the
9 "including but not limited to" part is just trying
10 to give them some indication of what type of fast-
11 growing tree species we are looking at.

12 HEARING OFFICER SHEAN: Okay. I think
13 we'll just let the committee sort of cogitate on
14 this and try to come up with something that more
15 or less satisfies you and gives flexibility that
16 will include the input of Kings County so that
17 everyone is more or less not --

18 SUPERVISOR EDWARDS: Can I add something
19 please?

20 HEARING OFFICER SHEAN: Sure, go ahead.

21 SUPERVISOR EDWARDS: My name is Dale
22 Edwards. I supervise the Visual, Cultural,
23 Socioeconomics Unit here at the Energy Commission
24 and the Environmental Protection Office. Staff's
25 position on why we are seeking this change to the

1 PMPD is because this is the language that was
2 originally agreed to by staff and the applicant at
3 a workshop back on the same date as the prehearing
4 conference on January 4th.

5 And we also have, as of yesterday I
6 believe it was, received a compliance submittal
7 prior to certification in this case that is
8 already indicating compliance with -- It's a
9 landscaping plan, basically, that is in compliance
10 with the staff proposed visual six, which is at
11 variance with the PMPD's visual five, which is
12 what we're trying to seek is the language change
13 to bring it back into accordance with the staff-
14 proposed language which, as I say, is also
15 consistent with what the applicant has already
16 submitted.

17 HEARING OFFICER SHEAN: Okay. And it
18 would be your -- is it also your view that the
19 ultimate disposition of the conditions of a
20 decision is the Commission prerogative?

21 SUPERVISOR EDWARDS: Of course.

22 HEARING OFFICER SHEAN: Okay, and that
23 among the things that the full Commission might
24 look at is whether or not language in one
25 particular proceeding may either set a precedent

1 or not be consistent with other precedents in
2 other proceedings?

3 SUPERVISOR EDWARDS: That's true. Now,
4 from staff's perspective, we're always looking for
5 maintaining consistency and, in fact, the concern
6 that we have is the way that the conditions have
7 been proposed through the PMPD sends a big signal,
8 which is bad for the applicant and the Commission,
9 in fact --

10 HEARING OFFICER SHEAN: And what's that
11 signal?

12 SUPERVISOR EDWARDS: Well, that you can
13 either do this or you can do that to achieve
14 mitigation to a less than significant level. That
15 is not staff's position at this time. The
16 position we have taken is that the condition as
17 proposed by staff does achieve less than
18 significant levels of impact, whereas if the slats
19 in the fence or a berm alone were deemed, well,
20 they're not deemed as adequate mitigation, but the
21 condition as written implies that.

22 HEARING OFFICER SHEAN: Okay. We're
23 done.

24 STAFF COUNSEL DE CARLO: If I may, I
25 have some suggested language to at least address

1 the committee's concern about the "including but":
2 Instead of the "including but," insert "such as,
3 but not limited to evergreens," so that gives an
4 indication that -- a type of fast-growing tree
5 species; however, it's not limiting the applicant
6 to just that.

7 SUPERVISOR EDWARDS: And we're looking
8 for year-round screening, not just deciduous trees
9 was mainly the intent on that.

10 HEARING OFFICER SHEAN: Okay. I think
11 we have it in mind. We'll try to fashion
12 something that will more or less satisfy
13 everybody.

14 STAFF COUNSEL DE CARLO: And, if I may,
15 just really quickly, on the issue of being as
16 specific as possible on the condition, CEQA does
17 require that the mitigation measures be specific
18 and not be some ephemeral, ethereal type of
19 language. So we attempt to be as specific as
20 possible, to let the public and other parties know
21 that with this implementation, this is what we're
22 looking for, and that will address and mitigate
23 our concerns about significant impacts.

24 So that's why we attempt to be as
25 specific as possible in these conditions.

1 HEARING OFFICER SHEAN: All right. With
2 that, everything on page -- Let's see, let's just
3 finish up -- everything else on page seven we've
4 done. Everything else on page eight is fine.
5 Everything else on page nine is fine. Everything
6 on ten is fine. Eleven as well. Let's see, now
7 we got to page 12, which has got this added
8 workers' safety condition, and I guess this is
9 just something that was in the revisions that
10 somehow the committee did not include; is that
11 correct?

12 STAFF COUNSEL DE CARLO: Right. This
13 was in the staff assessment and was not included
14 in the PMPD.

15 HEARING OFFICER SHEAN: Okay. I have no
16 idea why that would have been.

17 Now, how about these construction
18 milestones, what's the authority for including
19 those? Is there a legal authority for it?

20 STAFF COUNSEL DE CARLO: We've spoken
21 with the applicant in there. We're trying to
22 maintain some consistency with the past projects
23 we've done. We're using the milestones language
24 and the applicant was amenable to including the
25 milestones language. We're just trying to be able

1 to get a good idea of the construction time line
2 on this project, when it will be built so it will
3 help us in our planning purposes.

4 And the applicant was amenable to this
5 language.

6 HEARING OFFICER SHEAN: Well, aren't you
7 preparing to build and operate this by the summer
8 of 2002?

9 APPLICANT COUNSEL GRATTAN: Yes, we are,
10 and that's why we didn't object or go into the
11 legal authority. If you'd like a private opinion
12 as to the legal authority --

13 HEARING OFFICER SHEAN: I'm sorry?

14 APPLICANT COUNSEL GRATTAN: -- I'm
15 willing to give one.

16 HEARING OFFICER SHEAN: Well, I mean, do
17 you think -- what legal authority is there to
18 impose a deadline and basically threaten the
19 applicant with sanctions if they don't make the
20 deadline?

21 APPLICANT COUNSEL GRATTAN: Well, the
22 answer is that I think at one time when the
23 emergency orders were in effect for a specific
24 project authorized for expedited processing under
25 that emergency order that there was legal

1 authority. This is not one of those projects and
2 the emergency orders have expired under their own
3 terms.

4 But again, we don't --

5 HEARING OFFICER SHEAN: I understand you
6 don't object, it's just a question of --

7 APPLICANT COUNSEL GRATTAN: Well, that's
8 fine.

9 HEARING OFFICER SHEAN: -- what's the
10 legal authority to impose the milestones with an
11 included language of ability to sanction the
12 applicant for failure to comply.

13 I mean, you said you just want the
14 information to know when they're going to be doing
15 what they're doing. Do you need the sanction
16 language in there as well?

17 STAFF COUNSEL DE CARLO: In terms of
18 consistency, we would prefer that it remain in;
19 however, we won't go into legal authority for
20 requiring this.

21 HEARING OFFICER SHEAN: Do you agree
22 with Mr. Grattan that the only authority that
23 existed for the inclusion of those in prior cases
24 was the executive orders of the governor and that
25 those have since lapsed?

1 STAFF COUNSEL DE CARLO: That was an
2 obvious authority to do so. I'm not sure at this
3 point that I'd be willing to state that we have no
4 authority to require this; however, since the
5 applicant was willing to include this in there, in
6 the conditions, we felt it wasn't necessary to go
7 into the authorities.

8 HEARING OFFICER SHEAN: Okay, and you
9 agree that the applicant agrees to walk off the
10 end of the pier, the committee does not have to
11 accept it, right? Okay.

12 APPLICANT COUNSEL GRATTAN: We don't
13 propose to walk off any pier.

14 (Laughter.)

15 HEARING OFFICER SHEAN: Or jump off a
16 cliff or whatever you propose that might be
17 agreeable, given the circumstances, but --

18 Okay. Let's go to the applicant's
19 comments. On the first page we've accepted all of
20 those. Let's see, I had a question here on the
21 second page.

22 All right. On page 26, your comment
23 here is on line four after "grid," insert the
24 words, "to reduce NOx to 3.6 ppm." Does that mean
25 that the language that's up in the first sentence,

1 "As discussed above for ozone, project owner
2 proposes to reduce NOx to meet the best available
3 control technology of 3.6"; wouldn't that language
4 be stricken from -- the BACT portion of that be
5 stricken, based upon the nature of your comments?

6 APPLICANT COUNSEL GRATTAN: I'm sorry,
7 could you more slowly repeat that, I'm turning
8 pages here.

9 HEARING OFFICER SHEAN: Okay. Page 26
10 of the PMPD.

11 APPLICANT COUNSEL GRATTAN: Right.

12 HEARING OFFICER SHEAN: On the left-hand
13 side here, the second full paragraph under
14 Nitrogen Dioxide. The suggested addition by the
15 applicant came at the end of that first long
16 sentence after the word "grid," to include "to
17 reduce NOx to 3.6 ppm."

18 APPLICANT COUNSEL GRATTAN: You're down
19 here.

20 HEARING OFFICER SHEAN: No, I'm on the
21 left-hand side of the document, I don't know --
22 You're on page 26?

23 APPLICANT COUNSEL GRATTAN: Yes.

24 HEARING OFFICER SHEAN: Okay.

25 APPLICANT COUNSEL GRATTAN: Under

1 Nitrogen Dioxide?

2 HEARING OFFICER SHEAN: Yes.

3 APPLICANT COUNSEL GRATTAN: Okay, yeah.

4 HEARING OFFICER SHEAN: The "As

5 discussed above for ozone" paragraph?

6 APPLICANT COUNSEL GRATTAN: Yeah.

7 HEARING OFFICER SHEAN: Your suggestion

8 and your written comments is to add language at

9 the end of that first sentence, after the word

10 "grid."

11 APPLICANT COUNSEL GRATTAN: Right.

12 HEARING OFFICER SHEAN: Okay. Now, what

13 I'd like you to do is to read the second line of

14 that first --

15 APPLICANT COUNSEL GRATTAN: Yeah, we've

16 recommended a five ppm in the second line, and I

17 guess we're -- I think we were being excessively,

18 belt-and-suspenders here, and if we -- if the

19 sense of the sentence, if you believe the sense of

20 the sentence remains the same without adding --

21 HEARING OFFICER SHEAN: No, no, I'm fine

22 with the addition. What I get to is that if we

23 make that change as you recommend, and it's

24 appropriate, then doesn't that introduce an

25 inconsistency in the paragraph which we should get

1 rid of, which is if you read it "As discussed
2 above for ozone, project owner proposes to reduce
3 NOx emissions to meet the best available control
4 technology, BACT, of 3.6" --

5 APPLICANT COUNSEL GRATTAN: I think
6 we've suggested --

7 HEARING OFFICER SHEAN: -- which that is
8 not BACT --

9 APPLICANT COUNSEL GRATTAN: That should
10 be 5.0.

11 HEARING OFFICER SHEAN: Right. So we
12 can just say "applicant proposes to reduce NOx
13 emissions to 3.6 ppm"; is that right? And strike
14 the "meet the best available control technology,
15 BACT"?

16 APPLICANT COUNSEL GRATTAN: That works.

17 HEARING OFFICER SHEAN: Okay.

18 APPLICANT COUNSEL GRATTAN: That works.

19 HEARING OFFICER SHEAN: Yes, I just
20 wanted to make sure that that was consistent with
21 what your comment was.

22 Okay. The rest of page two of the
23 applicant looks fine. Oh, I notice down the one
24 you show, the comment for page 165, the -- Let me
25 get there. Staff had recommended deletion of the

1 word "Potentially" for "Potentially contaminated
2 storm water," and you're recommending the deletion
3 of the whole sentence. So page 165, the first
4 full paragraph, basically in the middle of the
5 paragraph, the current sentence starts,
6 "Potentially contaminated storm water"; based upon
7 the staff's suggested revision, it would begin,
8 "Contaminated storm water from paved or equipment
9 areas may be discharged," etc., and you're
10 recommending the deletion of the entire sentence.

11 Are you happy with the staff's proposed
12 change or can you be happy with that?

13 APPLICANT COUNSEL GRATTAN: I believe
14 our proposal was to contain it within the site,
15 and not necessarily to treat it. And we're not
16 going to know whether it's contaminated until we
17 do the monitoring, and if we do the monitoring,
18 then we treat. And we think our sentence is a
19 little clearer.

20 HEARING OFFICER SHEAN: Well, you have
21 the deletion of the sentence.

22 APPLICANT COUNSEL GRATTAN: But we've
23 inserted another.

24 HEARING OFFICER SHEAN: Okay, and
25 that --

1 APPLICANT COUNSEL GRATTAN: Which is on
2 the second page.

3 HEARING OFFICER SHEAN: Okay. Staff,
4 how do you feel about their sentence?

5 STAFF COUNSEL DE CARLO: Well, we're
6 concerned that their sentence would allow for the
7 discharge of contaminated storm water to the
8 detention basin.

9 APPLICANT COUNSEL GRATTAN: Well, we
10 said we'd contain it on site.

11 SENIOR PROJECT MANAGER STEIN: I mean,
12 that's the issue. We don't know whether it's
13 contaminated -- Until we do the testing, we don't
14 believe that it's contaminated.

15 HEARING OFFICER SHEAN: Is there
16 language --

17 SENIOR PROJECT MANAGER STEIN: I mean,
18 there's no evidence that it ever would be
19 contaminated to a level that would require
20 treatment.

21 APPLICANT COUNSEL GRATTAN: How about if
22 we say this: If monitoring -- If the testing
23 thing indicates that the water, or demonstrates
24 that there is contaminated stand water --

25 SENIOR PROJECT MANAGER STEIN: Sure, if

1 we had that parenthetical here?

2 APPLICANT COUNSEL GRATTAN: Yeah.

3 SENIOR PROJECT MANAGER STEIN: Yes. If
4 biennial monitoring demonstrates --

5 APPLICANT COUNSEL GRATTAN: Right, yeah.

6 Maybe we can -- If you look at the
7 sentence again beginning with "Potentially," if we
8 say "If the monitoring program demonstrates that
9 the storm water is contaminated," then, and the
10 staff sentence is -- Where is -- "then the storm
11 water will be treated to remove" --

12 If we delete the sentence beginning with
13 "Potentially," and say, "If the monitoring program
14 demonstrates that the storm water is contaminated,
15 then the storm water will be treated to remove
16 contaminants prior to discharge to the basin."

17 STAFF COUNSEL DE CARLO: That should
18 satisfy staff's concerns.

19 HEARING OFFICER SHEAN: It's agreed.

20 APPLICANT COUNSEL GRATTAN: Okay.

21 HEARING OFFICER SHEAN: Okay with us.

22 APPLICANT COUNSEL GRATTAN: Okay.

23 HEARING OFFICER SHEAN: All right.

24 STAFF COUNSEL DE CARLO: Staff also has
25 a comment on applicant's comment on page 165,

1 below that discussion, in referencing -- the PMPD
2 as it states references water quality two at the
3 bottom of page 165. The applicant suggested water
4 quality five be the reference. Staff suggests
5 water quality seven, and I believe the applicant
6 is in agreement with that.

7 APPLICANT COUNSEL GRATTAN: Yeah, we're
8 agreeing to that.

9 HEARING OFFICER SHEAN: Seven is the
10 reference?

11 APPLICANT COUNSEL GRATTAN: Yeah, seven
12 is the --

13 HEARING OFFICER SHEAN: Okay. Got it.

14 Okay. I should also indicate that I had
15 from staff submission of informal staff comments
16 that basically were typographical errors. There's
17 nothing substantive in them. And now we have
18 before us here the URS comments, and there appear
19 to be seven that are largely typographical in
20 nature as well. So we'll go ahead and do those.

21 APPLICANT COUNSEL GRATTAN: Should we
22 docket these? They haven't --

23 HEARING OFFICER SHEAN: I think so.

24 APPLICANT COUNSEL GRATTAN: Yes.

25 HEARING OFFICER SHEAN: Now, do we need

1 to take a break for you to look at this ISO
2 document?

3 STAFF COUNSEL DE CARLO: Yeah, let me
4 run upstairs and get it.

5 HEARING OFFICER SHEAN: All right.

6 STAFF COUNSEL DE CARLO: And I apologize
7 for not having it right here.

8 HEARING OFFICER SHEAN: Sure, no
9 problem. We'll take a brief break.

10 (Thereupon, a recess was held
11 off the record.)

12 HEARING OFFICER SHEAN: So the applicant
13 has no objection to the admission of the Cal ISO
14 letter.

15 APPLICANT COUNSEL GRATTAN: No.

16 HEARING OFFICER SHEAN: No, okay.

17 (Thereupon, the above-referenced document was
18 marked as a CEC exhibit for identification
19 and received into evidence.)

20 HEARING OFFICER SHEAN: Let me just
21 indicate I have, in the time it's taken to get
22 that letter reviewed, the visual matter, I think
23 what we'll do is take the staff-proposed paragraph
24 on prior to start of commercial operations in with
25 the amendments that have been suggested that

1 eliminate a proscribed species, substitute that
2 for what we have here in the PMPD. And so long
3 that it also indicates that this matter needs to
4 be consistent with the local county requirements,
5 that's fine with us.

6 Now, did you have an issue with regard
7 to suitable irrigation shall be installed or is
8 that all right with you?

9 APPLICANT COUNSEL GRATTAN: Yes, thank
10 you. I was just about to, on staff comment, the
11 line, line 19, where it says, "Suitable irrigation
12 shall be installed to ensure survival," and we'd
13 like the words "if necessary" added after
14 "installed."

15 STAFF COUNSEL DE CARLO: And that's fine
16 with staff.

17 HEARING OFFICER SHEAN: Okay. All
18 right. Then we pretty much have it.

19 What we will do for the next couple of
20 days is go ahead and make these changes. I think
21 we've announced what they are. I'll try to
22 have -- I think at the presentation for the
23 Tuesday special business meeting, I would just
24 indicate that the committee has incorporated the
25 changes, essentially, of both the staff and the

1 applicant.

2 And the state of -- I'm trying to figure
3 out what we can provide you, if anything, beyond
4 that representation. We could either come up with
5 a CV or something like that, or a Word-printed
6 version, but I don't know that there's a lot of
7 time to review that. So what's --

8 APPLICANT COUNSEL GRATTAN: We'll get to
9 see it before the meeting, like the morning of the
10 meeting?

11 HEARING OFFICER SHEAN: Probably, yeah.
12 But we're not going to do it as a strikeout and
13 underline, it's just too much added work. I mean,
14 the idea is just get this the way we want it to
15 be. Because what we'd like to do is have it so
16 that when the Commission votes we can crank out
17 the final signed version and you leave maybe that
18 day with a docketed decision.

19 How about the staff?

20 APPLICANT COUNSEL GRATTAN: I'll defer
21 whatever --

22 STAFF COUNSEL DE CARLO: As long as we
23 can take a quick look at it in the morning before
24 the Commission business meeting, it doesn't need
25 to be in red-line strikeout, that's fine with

1 staff.

2 HEARING OFFICER SHEAN: Yeah. Well, it
3 won't be, so --

4 APPLICANT COUNSEL GRATTAN: That's fine
5 with us.

6 HEARING OFFICER SHEAN: Okay. At least
7 you can look at the matters that are the most
8 critical --

9 STAFF COUNSEL DE CARLO: Well, there's
10 only a few important matters that we're really
11 concerned about --

12 HEARING OFFICER SHEAN: Right.

13 STAFF COUNSEL DE CARLO: -- so that
14 should be fine.

15 HEARING OFFICER SHEAN: Okay. We'll do
16 it like that. Thank you very much.

17 STAFF COUNSEL DE CARLO: Right, thank
18 you.

19 APPLICANT COUNSEL GRATTAN: And we thank
20 the committee and the Commission for getting us a
21 special meeting.

22 HEARING OFFICER SHEAN: Didn't seem to
23 make sense to hold you over till the 20th.

24 APPLICANT COUNSEL GRATTAN: And we'll
25 docket these reference changes later in the

1 morning.

2 HEARING OFFICER SHEAN: Okay. Thank you
3 very much.

4 (Thereupon, the meeting was
5 adjourned at 11:00 a.m.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission application meeting; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
workshop, nor in any way interested in outcome of
said meeting.

IN WITNESS WHEREOF, I have hereunto set
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